



RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101
Telephone 213.626.8484 Facsimile 213.626.0078

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PRACTICES DIVISION

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RICHARD RICHARDS
(1916-1988)

January 14, 2003

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OF COUNSEL

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MARK L. LAMKEN
SAYRE WEAVER
WILLIAM K. KRAMER
JIM G. GRAYSON
BRUCE W. GALLOWAY

SAN FRANCISCO OFFICE
TELEPHONE 415.421.8484
FACSIMILE 415.421.8484

ORANGE COUNTY OFFICE
TELEPHONE 714.990.0901
FACSIMILE 714.990.6230

Galena J. West, Esq.
Fair Political Practices Commission
Legal Division
428 J Street, Suite 800
Sacramento, California 95804-0807

Reference: Request for Clarification - AB 1797 / Government Code § 87105

Dear Ms. West:

Last Monday, I spoke with a member of the FPPC staff named Trish, who informed me that you are currently drafting a regulation interpreting Assembly Bill 1797 (Harman), which added Section 87105 to the Government Code. I am writing to explain my concerns about the ambiguities of the new statute, and to request that the regulation you are drafting clarify these ambiguities.

This law firm represents a number of California public entities, including joint powers authorities, water districts, and transit authorities. Members of the governing boards of such entities are not considered "public officials" under Government Code Section 87200, and so ordinarily would not be subject to Section 87105. However, many of these agency board members also serve as city councilmembers, or hold similar offices that do fall under Section 87200. It is unclear from the terms of the statute whether a member of a public agency board not subject to Section 87200 would nevertheless be subject to Section 87105 in regards to his or her actions on the agency's governing board, when he or she also serves as a city councilmember or holds a similar public office. Given that many public officials wear multiple hats in this manner, I would appreciate it if your regulation would specifically address under what circumstances Section 87105 applies to these officials.

Galena J. West, Esq.

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In the interim, I would like to properly advise our clients on how to comply with the new statute. In our phone conversation, Trish advised me that a member of the governing board of a public agency who served on that board "because of" his or her status as a public official *would* be subject to Section 87105, whereas a board member whose membership was unrelated to his or her status as an official would *not* be subject to the new statute.

However, I am uncertain as to the exact application of this advice—it is unclear to me whether some of the members of public agencies we represent serve those agencies "because of" their positions as public officials. For example, we represent a special district governed by an executive board for which it is *not* required that any of the board members be city councilmembers. About half of the board members are city councilmembers, but they are not required to be. Based on last Monday's informal advice, I assume that these district board members do not serve the special district because of their status as councilmembers and therefore would not be subject to Section 87105.

We also represent a transit authority governed by an executive board. Certain members of the executive board *must* be councilmembers from the member cities pursuant to the joint powers agreement, but other members are not councilmembers or other persons described by Section 87200. Based on last Monday's informal advice, I assume that the board members who serve the transit authority "because of" their status as councilmembers would be subject to Section 87105, but that the other board members would not.

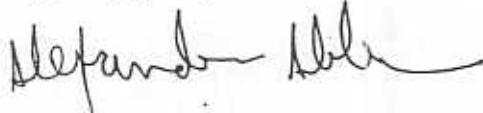
However, I respectfully disagree with this interpretation of the Legislative intent; I believe this interpretation reaches further than the Legislature intended. The Legislature established two different means of addressing potential conflicts of interest, one for officials governed by Section 87200, who must file Form 700 Statements of Economic Interest, and another for other public officials, who must comply with local conflict of interest codes. The special district and transit authority board members described above would ordinarily fall into that second category of officials, and Section 87105 by its terms only applies to the first category. The Legislature has maintained separate requirements for these two different types of public officials, and I believe that your interpretation would improperly subject the second category to first category requirements.

Galena J. West, Esq.
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If I have misunderstood Trish's advice or if my conclusions are in error, I would appreciate it if you would inform me. If you have any questions or need any more information from me as you draft the regulation, please feel free to contact me.

Thank you for your assistance.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Alexander Abbe", with a long horizontal flourish extending to the right.

Alexander Abbe

cc: Darold D. Pieper, Esq.

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FAIR POLITICAL
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LAW OFFICES OF

WOODRUFF, SPRADLIN & SMART

A PROFESSIONAL CORPORATION

701 SOUTH PARKER STREET, SUITE 8000 ■ ORANGE, CA 92868-4760 ■ (714) 558-7000 ■ FAX (714) 835-7787

*Consent
cal.*

[DIRECT DIAL] (714) 564-2607

[DIRECT FAX] (714) 565-2507

[E-MAIL]: LEJ@WSS-LAW.COM

February 4, 2003

Chair Getman and Members of the Commission
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Consideration of Regulations to Implement
Government Code Section 87105

Ladies and Gentlemen:

I serve as City Attorney for two cities. I appreciate the opportunity to comment on the proposed regulations.

Please consider the issue of the requirement to leave the room in the context of a conflict on a consent calendar item that is not pulled for discussion, but simply for the purpose of identifying a conflict and abstaining from the vote. I recommend that the Commission draft a regulation that requires identification of the conflict and abstention, but does not require leaving the room. Such an agenda item can take less than a minute yet the requirement to leave the room will extend the business meeting by 5-10 minutes, primarily consisting of the time for the member to exit the room and to reenter after the vote. In my opinion, no purpose is served in this situation by requiring the member to even leave the dais, but this is less disruptive to the Council's business than strict adherence to the "leave the room mandate."

The law was clearly aimed at discussion items where the presence of the "conflicted" councilmember in the room was believed to potentially affect the vote on the item. This potential is not present on a consent calendar item that is not pulled for discussion.

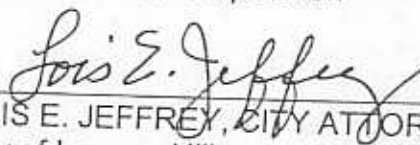
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Chair Getman and Members of the Commission
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February 4, 2003
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Thank you for your consideration.

Very Truly Yours,

WOODRUFF, SPRADLIN & SMART
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A handwritten signature in cursive script, reading "Lois E. Jeffrey", is written over a horizontal line.

LOIS E. JEFFREY, CITY ATTORNEY
City of Laguna Hills
City of Tustin

cc: Bruce E. Channing, City Manager, City of Laguna Hills
William A. Huston, City Manager, City of Tustin

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